



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**ELC MISC. CASE NO. 10 OF 2015**

**KAINGU ALI VUVU & 3 OTHERS..... APPLICANTS**

**-VERSUS-**

**SAMMY ALI VUVU..... RRSPONDENT**

**RULING**

1.This ruling is on a miscellaneous application dated 25<sup>th</sup> February 2015 brought under section 18 of the Civil Procedure Act and Order 51 rule 1 of the Rules. It seeks for orders to transfer Mombasa PMCC NO 3458 of 2013; Sammy Kinyumu Kimweli -vs- Ali Vuvu & 3 others to this Court for hearing and final disposal.

2. The application is supported by the four grounds listed on the fare cf it inter alia that the 2<sup>nd</sup> Applicant avers that he is registered as owner and trustee of his family members for plot Title No 29692. Secondly there are three suits pending in the high court regarding several titles in the area and it would be practical if the suits are consolidated and heard together.

3.The application is opposed by the plaintiff/Respondent vide his grounds of opposition dated 27.5.2015; The Respondent argues that the application is an after thought and an abuse of the Court process. Secondly that the application is bad in law in view of the provisions of Order 11, Section 1 A and 1 B and practice directions given by the Chief Justice. Lastly that this suit is bad in law in light of the provisions of Section 6 of the Civil Procedure Act.

4.The parties filed their respective written submissions which I have read through and consid2red. The Respondent submitted that this suit was filed on 6<sup>th</sup> December 2013. This is after the publication of the practice directions of the Chief Justice. The directions were in relation to the matters that were pending before the commencement of the Environment and Land Court Act. The practice directions do not and cannot confer jurisdiction upon the magistrate's courts. This was the finding of the Court of appeal in the case of **Jefferson Kalama & 2 others vs R (2015) eKLR**. That the Chief Justice lacked powers to confer jurisdiction to hear matters reserved for the Environment and Land Court. Further in the case of **S. K Macharia & another vs KCB**, it was stated that a Court's jurisdiction flows from either the constitution or legislation or both.

5. While this matter was pending for ruling, there was an amendment to the Magistrate's Court Act and the Environment and Land Court Act which became effective on 2.1.2016. By that amendment, Section 26 (4) of the Environment and Land Act now jurisdiction is conferred on the Magistrate's Courts to hear land and environment matters within their pecuniary limits. Consequently there is no need to have this suit transferred to the ELC Court. In the event the applicant wishes to participate in the suits existing in the Environment and Land Court regarding the same subject matter, he can make appropriate application to be joined.

6.The application is refused on the basis of the new amendments to the law.

Each party is ordered to bear their respective costs.

**Ruling dated and delivered in Mombasa this 12<sup>th</sup> day February 2016.**

**A.OMOLLO**

**JUDGE**